XII-189 (Jail) C J.P.R.-9-94

(Cri.) 2517/98 (2)

CF0000059642

APPEAL OF PRISONER

D 13 (iii)

No छ-दी.क्रमांक- 1222/58 Name गम्भीर साय-

Father's name रामसिंह मुकाम- मोहबारपरा साइडिंग थाना-पोड़ी जि० कोरिया (म०प्र०)

Residence _____ Age 38 वर्ष

Sentenced to 302 I.P.C. on 27.8.98 माननीय न्यायालय-

Under Section आजीवन कारावास by श्रीमती सुधा श्री मिश्रा जुडीशि मजिस्ट्रेट प्रथम वर्ग पेन्ड्रारोड, जिला कोरिया (म०प्र०)

It is explained to the prisoner that if he states he wishes to be represented by a legal practitioner the appellate Court will not proceed with the case for seven days unless the legal practitioner appears earlier. If the legal practitioner does not appear within seven days he may not heard at all if the Prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to my legal practitioner who should appear.

1 Date of Application for copy of Judgement _____

2 Date on which copy received _____

3 Date on which Appeal sent _____ 18.9.98

4 Whether the prisoner wishes to be represented or ~~not~~ _____

No छ-दी.क्रमांक 1222/58 Name गम्भीरसाय पि० रामसिंह

Confined in सेन्ट्रल Jail बिलासपुर (मध्य प्रदेश)

No. _____ Dated 18.9.1998

Forwarded to the रजिस्ट्रार महोदय, माननीय उच्च न्यायालय, जबलपुर (म०प्र०)

gether with a copy of judgement or order passed in the case for favour of transmission to the proper Appellate court.

सेन्ट्रल जेल अधीक्षक,
बिलासपुर (म०प्र०)

SUPERINTENDENT, CENTRAL JAIL, BILASPUR 19/9

Superintendent

Jail

Date of receipt in _____ Office _____

Date of receipt of record to accompany the _____

Memo of Appeal to the Appellate court _____

No _____ Dated _____ 199 _____

Forwarded to the _____

Date of receipt in Appellate court _____

(P. T. O.)

XI-HC-22

(33)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ...C.A.2517/98... **सन्** **200**

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench: -

Hon'ble Mr. L.C. Bhadoo and
Hon'ble Mr. Dhirendra Mishra, JJ.

14-11-2006

Mrs. Savita Tiwari, counsel for the appellant.

Mr. Akhil Mishra, Panel Lawyer for the State/respondent.

Today the matter has been listed for hearing on I.A.No.308/2005, application for final hearing of appeal, I.A.No.309/2005, application for urgent hearing of final hearing application, and I.A.No.2771/2005, application for modification of bail order granted earlier. As agreed by learned counsel for the parties, the matter is heard finally.

Oral judgment dictated on *Dais*.

Per L.C. Bhadoo, J: -

By this appeal under Section 374 (2) of the Cr.P.C., accused/ appellant Gambhirsai Gond has questioned legality and correctness of the judgment of conviction and order of sentence dated 27-8-1998 passed by the Additional Sessions Judge, Manendragarh, District: Korea, in Sessions Trial No.256/97, whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C., sentenced him to undergo imprisonment for life.

Case of the prosecution, in brief, is that on 31st May, 1997, at about 5 p.m. Mahaveer (since deceased) went to the house of Bhagwandas. When Bagarsai, deceased Mahaveer and eyewitness Phulbasia, wife of Bhagwandas, were sitting in the house of Bhagwandas, the accused came to the house of Bhagwandas carrying axe in his hand and attacked deceased Mahaveer on his head and fled away from the scene of

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मामला क्रमांक G.A.2517/98 **सन्** ~~200~~

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

occurrence, as a result of which the deceased received fatal injury and sustained a cut injury on left parietal & temporal regions in the size of 17 cms. x 3 cms. and brain matter was visible from the injury as a result thereof parietal & temporal bones were cut. Bhagwandas (PW-4) immediately informed Sheela Devi (PW-1), wife of the deceased about the incident. She came on the spot and after seeing the condition of her husband she reported the matter to Police Station: Podi under the first information report Ex.P-1.

The Station House Officer after registering the case under Section 302 of the I.P.C. left for the scene of occurrence, prepared the inquest report Ex.P-2 of the body of Mahaveer and took into possession plain soil & blood stained soil from the place of occurrence. He also took into possession clothes of the accused under Ex.P-4. While in police custody, the accused gave information Ex.P-7 regarding the axe, the weapon of offence, and in pursuance of that he got recovered the axe under Ex.P-6. The body of Mahaveer was sent for post-mortem examination to Primary Health Centre, Chirmiri, where Dr. A.K. Agrawal (PW-8) conducted post-mortem and prepared the post-mortem report Ex.P-8. In post-mortem, the doctor noticed the injury of incised wound in the size of 17 cms. x 3 cms. over left parietal and temporal regions. He opined that the injury was fatal in nature and the death was due to shock and haemorrhage as a result of injury on the vital organ. The weapon of offence was sent to the doctor for his opinion and vide Ex.P-9, he opined that the injury found on the body of Mahaveer was possible by the assault of the weapon of offence. The site plan Ex.P-13 was prepared. The recovered articles were sent for chemical examination to the Forensic Science Laboratory, Sagar, under Ex.P-14, from where the report Ex.P-14 was received.

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..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate, First Class, Manendragarh, who in turn committed the case to the Sessions Judge, Ambikapur, from where learned Additional Sessions Judge received the case on transfer for trial.

The prosecution in order to establish charge against the accused examined ten witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the material appearing against him in the prosecution evidence and stated that he is innocent and he has been falsely implicated in the crime.

Learned Additional Sessions Judge after hearing the arguments of respective counsel and perusal of the record, convicted and sentenced the accused as aforementioned.

We have heard Mrs. Savita Tiwari, learned counsel for the appellant and Mr. Akhil Mishra, learned Panel Lawyer on behalf of the State/respondent.

Mrs. Tiwari, learned counsel for the appellant, did not dispute the homicidal death of Mahaveer. Apart from that, the eyewitnesses namely, Phulbasia (PW-2) & Bagarsai (PW-3) have categorically stated in their evidence that they were sitting along with Mahaveer, accused came with an axe and attacked the deceased on his head with the axe. The above evidence is corroborated by the medical evidence of Dr. A.K. Agrawal (P-8) who has stated that the injury was fatal in nature and the same could be caused by the axe, which was recovered at the instance of the accused, and the death was homicidal in nature. Therefore, in view of this ocular

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

and medical evidence, it is established that the death of Mahaveer was homicidal in nature.

As far as involvement of the accused/appellant in the crime in question is concerned, we have perused the evidence of Phulbasia (PW-2), wife of Bhagwandas, in whose house she along with deceased Mahaveer & Bagarsai were sitting at the time of the incident. She has categorically stated in her evidence that the accused came with an axe and attacked the deceased on his head twice without saying anything, as a result of which Mahaveer fell down and the accused fled away from the scene of occurrence, thereafter, her husband came to whom she sent to inform the wife of the deceased. She came along with her daughter, saw her husband and thereafter, she was sent for lodging the report in the Police Station. Bagarsai (PW-3), who has stated in his evidence that he was sitting on the scene of occurrence, has also corroborated the above evidence of Phulbasia and has stated that the accused came with an axe and attacked the deceased with the axe. This PW-3 is none else than father-in-law of the accused and he has categorically stated in his evidence that the accused attacked the deceased with the axe. The evidence of Phulbasia & Bagarsai is convincing, credible and in their cross-examination there is nothing to show that the evidence of these two witnesses suffers from any infirmity. Therefore, the Court below has rightly relied upon the evidence of Phulbasia (PW-2) & Bagarsai (PW-3). Their evidence has also been corroborated by the medical evidence of Dr. A.K. Agrawal (PW-8), who has stated in his evidence that he conducted post-mortem on the body of Mahaveer on 2-6-1997 and observed that there was a cut injury on left parietal & temporal regions. He has also opined that the injury, which was found on the head of the deceased,

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..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

could be caused by the axe in question, which was recovered at the instance of the accused. Therefore, from the above ocular and medical evidence, it is established that the accused was the author of the fatal injury, which was the cause of death of Mahaveer.

Learned counsel for the appellant while placing reliance on the judgment of the Apex Court in the matter of **Suresh Sitaram Surve v. State of Maharashtra** reported in **2003 CRI.L.J. 475** argued that the accused attacked the deceased only once, therefore, offence against the accused does not travel beyond Section 304 Part-II of the I.P.C.

On the other hand, Mr. Akhil Mishra, learned Panel Lawyer appearing on behalf of the State/respondent, supported the judgment of the trial Court.

In order to bring offence under Section 304 Part-II of the I.P.C. it is necessary that either the case is covered under any of the Exceptions of Section 300 of the I.P.C. or where it is established that the injury caused by the accused was not with intention to cause death of the victim. As has been discussed above, deceased Mahaveer along with Bagarsai & Phulbasia was sitting in the house of Bhagwandas, husband of Phulbasia, at that time, the accused came with an axe and without talking to any one, he immediately attacked the deceased on his head from the sharp edge side of the axe which resulted into cut injury in the size of 17 cms. x 3 cms., even bone was cut and brain material was visible from the injury. Mahaveer died instantaneously. There is nothing on record that the case of the accused is covered under any of the Exceptions of Section 300 of the I.P.C. As far as intention is concerned, it can be gathered from the background of the offence, part of the body where the injury was inflicted,

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the weapon of offence used and the manner in which the accused attacked the deceased with the deadly weapon like axe on the vital organ of the head with such a force that the skull bone was cut and the brain material became visible from the injury. Therefore, intention of the accused to cause death of Mahaveer was writ large. Even Dr. A.K. Agrawal (PW-8) has stated that the injury was on the vital part of the body and the death was homicidal in nature.

As far as the judgment relied upon by learned counsel for the appellant is concerned, it is distinguishable on facts. In that case, there were number of accused persons who attacked the deceased and the Court reached to the conclusion that there was no convincing evidence that the accused stabbed the deceased more than once, therefore, the Court held that the case which was made out against the accused was under Section 304 Part-I of the I.P.C. Whereas, in the present case, the accused was the author of the fatal injury which resulted into the death of deceased Mahaveer.

In the circumstances, we are of the considered opinion that there is no illegality or infirmity in the finding of the trial Court, as the finding is based on legal, clinching and convincing evidence.

In the result, the appeal, being devoid of merit, is liable to be dismissed and it is hereby dismissed.

Consequently, I.A.Nos.308/2005, 309/2005 and 2771/2005 stand disposed of.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Dhirendra Mishra
Judge

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